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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 13 2005

Federal Communications Commission
Office of Secretary

05-212

In the Matter of:)

Verizon Wireless Petition for)
Waiver of Section 64.402 of the)
Commission's Rules)

WT Docket No. _____

STATEMENT IN SUPPORT OF PETITION FOR WAIVER

The Secretary of Defense, through duly authorized counsel, hereby files this statement in support of in support of the above-captioned petition for waiver filed with the Federal Communications Commission ("FCC" or "Commission") on May 13, 2005.

STATEMENT OF INTEREST AND POSTION: DOD'S ROLE AS MEMBER OF THE NATIONAL COMMUNICATIONS SYSTEM (NCS), AND USER OF NATIONAL SERCURITY EMERGENCY PREPAREDNES (NS/EP) PRIORITY SERVICES

The National Communications System (NCS) administrative structure previously assigned to the DoD as Executive Agent was among the federal activities transferred into the Department of Homeland Security (DHS) in 2003.¹ The NCS² communications infrastructure consists of the telecommunications assets of the 23 major Federal Departments and Agencies represented on the NCS Committee of Principals (COP); DoD is one of the 23 elements that make up the NCS COP. The Homeland Security Act of

¹ See The Homeland Security Act of 2002, Public Law 107-296, November 25, 2002, § 201(g)(2).

² The NCS is described in Section 1 of Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Preparedness Telecommunications Functions, 49 Fed. Reg. 13471 (1984), as amended, as follows: "The NCS shall consist of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager."

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2002 reflects Congress' intent to leave undisturbed mission areas assigned to the DoD.³ Subsequent to the transfer of NCS management support to DHS, President Bush issued Homeland Security Presidential Directives (HSPDs) 5,⁴ 7⁵ and 8,⁶ which also recognize continuing DoD responsibilities for such functions as military command and control, incident response and crisis communications. It is in the DoD's capacity of NCS member and NSEP priority services user, that this Statement of Support is submitted.

DoD uses the voluntary wireless priority access service (PAS) capability authorized by the Commission⁷ (now commonly referred to as wireless priority service or WPS) offered by other wireless communications companies. Since coverage areas and cost vary between cellular carriers, increasing the number of providers offering WPS would enhance overall WPS coverage, while at the same time adding competing sources for procurement of WPS services. Since the Telecommunications Act of 1996⁸ was enacted: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage

³ Public Law No. 107-296, § 876. MILITARY ACTIVITIES provides in part: "Nothing in this Act shall ... limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities."

⁴ See HSPD 5, February 28, 2003 Subject: Management of Domestic Incidents paragraph (9), which states in part: "Nothing in this directive impairs or otherwise affects the authority of the Secretary of Defense over the Department of Defense, including the chain of command for military forces from the President as Commander in Chief, to the Secretary of Defense, to the commander of military forces, or military command and control procedures...."

⁵ See HSPD 7, December 17, 2003 Subject: Critical Infrastructure Identification, Prioritization, and Protection paragraph (20), which states in part: "...Nothing in this directive shall limit the authority of the Secretary of Defense with regard to the command and control, training, planning, equipment, exercises, or employment of Department of Defense forces, or the allocation of Department of Defense resources..."

⁶ See HSPD 8, December 17, 2003 Subject: National Preparedness paragraph (20), which states in part: "...Nothing in this directive shall limit the authority of the Secretary of Defense with regard to the command and control, training, planning, equipment, exercises, or employment of Department of Defense forces, or the allocation of Department of Defense resources."

⁷ The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, *Second Report and Order*, WT Docket No. 96-86, FCC 00-242, 15 FCC Rcd 16720 (2000) ("PAS Order"). See also 47 C.F.R. §402 and Part 64, Appendix B.

⁸ Public Law No. 104-104, 110 Stat. 56 (1996)

the rapid deployment of new telecommunications technologies” granting the requested waiver would allow at least some priority capability for eligible DoD NS/EP users in organizations that have contracted for Verizon Wireless cellular service in a particular location where, based on coverage and cost, using that provider best complies with operational needs and budgetary considerations.

Verizon Wireless requested a waiver of Section 64.402 of the Commission’s rules so that it could provide Phase I⁹ code division multiple access (CDMA) WPS. Per Verizon Wireless, network equipment and software currently used to provide CDMA wireless services are not capable of delivering WPS with one of the features required under the FCC’s rules -- the feature requiring service providers to distinguish among users in different priority groups; therefore Verizon is seeking to initially offer a single access functionality for all wireless priority service users until a fully compliant solution can be engineered. The waiver requested would take effect upon implementation of the Phase I CDMA capability¹⁰ and remain in effect until Phase II service, which will recognize the five priority levels, is implemented¹¹ by Verizon Wireless.

Permitting the requested two phased implementation approach would substantially enhance access to a version of WPS for key emergency responders in the heavily populated northeastern portion of the United States. The DoD accepts the assessments made by Verizon Wireless -- that given the complexity of the software development needed to provide WPS on CDMA networks, and the budgetary constraints that exist, the two-phased approach would be the most practical CDMA WPS deployment

⁹ In Phase I, all call attempts by priority users will be placed in the same queue awaiting the next available WPS channel, thus different priority levels will not be recognized.

¹⁰ It is anticipated Verizon Wireless will begin offering Phase I WPS capabilities in the first quarter (1Q) of calendar year (CY) 2006.

for that carrier. Such an approach would give initial WPS access to qualified users well in advance of the final, fully compliant version of CDMA WPS access.

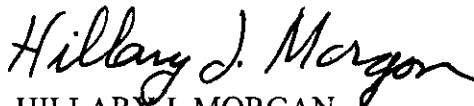
In the 2000 PAS Order, the Commission addressed the issue of service provider liability; it concluded that providing priority access to authorized NS/EP uses in accordance with the PAS rules would be *prima facie* lawful and not unreasonable discrimination or an unreasonable preference under Section 202(a) of the Communications Act of 1934, as amended. Verizon Wireless has requested that its operations under terms of the waiver be given the same protection, and the DoD concurs.

Wherefore, in view of the foregoing, the Secretary of Defense joins the Secretary of Homeland Security in urging the Commission to grant the waiver sought by Verizon Wireless and to specifically include the same limitations on service provider liability as contained in the PAS Report and Order.

Respectfully submitted,



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Date Signed 13 June 2005

¹¹ It is anticipated Verizon Wireless will begin offering Phase II WPS capabilities in 2Q CY2007.